1-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 13, 1984

Don M. Schmidt,
City Attorney
241 West South Street
Kalamazoo, Michigan 49007

Dear Mr. Schmidt:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to city officials and employees.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Pursuant to sections 5(4) and 7(1) of the Act (MCL 4.417), a city is required to register as a lobbyist if the city contracts for a lobbyist agent or if, in any 12 month period, it expends more than $1,000 for lobbying or more than $250 for lobbying a single public official. In addition, a person who lobbies on behalf of the city is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of $250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act are identified in section 5(7), which states in relevant part:

> "Sec. 5. (7) Lobbyist or lobbyist agent does not include:
>
> (b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.
>
> (c) For the purposes of this act, subdivision (b) shall not include:
>
> (ii) Employees of townships, villages, cities, counties or school boards." (emphasis added)

You do not dispute that elected officials of local government are excluded from the Act by section 5(7)(b). However, you point out that appointed officials are frequently considered employees of their political subdivisions. Therefore, you ask whether an appointed local official, such as a city manager, who is also a government employee is deemed a public official or an employee for purposes of the Act.

"Elected or appointed public officials of state or local government" is not defined in the Act. However, rule 1(1)(c) (1981 AACS R4.411) provides:

> "Rule 1. (1) As used in the act or these rules:
>
> (c) 'Elected or appointed public officials of state or local government' means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

Research indicates that the office of city manager is prescribed by charter. A typical city charter also provides that a city manager shall not serve a fixed term of office but shall serve at the pleasure of the manager's appointing authority. City managers whose offices are established in this manner are therefore "appointed public officials of . . . local government" who are not required to register as lobbyist agents unless they are brought back into the Act as employees under section 5(7)(c)(ii).

Section 5(7)(c)(ii) creates an exception to the exemption found in section 5(7)(b). That is, subsection (7)(c)(ii) specifically states the exemption for public officials found in subsection (7)(b) does not include employees of townships, villages, cities, counties or school boards. As you point out, the effect of section 5(7)(c)(ii) on persons who are both appointed public officials and employees is unclear. This uncertainty must be resolved by examining the Act's language to ascertain the intention of the legislature.

Section 5(7)(b), in a single phrase, exempts both state and local public officials. Therefore, it appears that section 5(7)(b) was intended to exclude local public officials holding positions similar to those held by exempt state officials.

The exemption carved by section 5(7)(b) for appointed state officials who are also employees is relatively clear. Although "elected or appointed public official of state . . . government" is not itself defined in the Act, section 6(2) (MCL 4.416) provides that a "public official" is "an official in the executive or legislative branch of state government." Officials in the executive and legislative branches are defined in sections 5(9) and (10) to include elected or appointed state officeholders and employees serving in non-clerical, policy-making capacities who are not under civil service. Thus, the Act implies that policymaking employees of state government who are not under civil service are public officials and not employees for purposes of the Act. As such, they are not required to register as lobbyist agents.

This analysis indicates that policymaking employees of local government who are public officials as defined in rule 1(1)(c) are "elected or appointed public officials of . . . local government." However, they are excluded from the Act by section 5(7)(b). As in the case of state policymakers, they are not brought back into the Act by section 5(7)(c) because the Act does not consider them to be employees of their political subdivision.

In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action. A city manager's duties are of broad scope and include the authority to commit the city to a certain course of action. As noted previously, a city manager is also an appointed local official who, pursuant to charter, serves at the pleasure of the appointing authority. Consequently, a city manager is a public official who is not subject to the Act's registration and reporting requirements, provided the city manager receives no additional compensation for lobbying and the lobbying is in the course or scope of office.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 13, 1984

Don R. Elliott
Executive Director
Michigan Association of School Administrators
421 West Kalamazoo
Lansing, Michigan 48933

Dear Mr. Elliott:

This is in response to your request for a declaratory ruling with respect to the application of the lobby law, 1978 PA 472 (the "Act"), to school superintendents and other school administrators.

You indicate it is your belief that school officials are exempt from the registration provisions of the Act.

Section 5(5) of the Act (MCL 4.415) defines "lobbyist agent" as follows:

> "(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses or both, in a combined amount in excess of $250.00 in any 12-month period for lobbying."

Section 5(7) exempts certain categories of individuals from the definitions of lobbyist and lobbyist agent as follows:

> "(7) Lobbyist or lobbyist agent does not include:
> (a) A publisher, owner or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business.
> (b) All elected or appointed officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.
> (c) For the purposes of this act, subdivision (b) shall not include:
> (i) Employees of public or private colleges, community colleges, junior colleges or universitites.
> (ii) Employees of townships, villages, cities, counties or school boards.
> (iii) Employees of state executive departments.
> (iv) Employees of the judicial branch of government.
> (v) Appointed members of state level boards and commissions.

> (d) A member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)."

Subsection (b) exempts elected or appointed public officials acting in the course of their office. However, subsection (c) eliminates this exemption for public officials who are identified as employees.

In the course of implementing the Act the Secretary of State promulgated administrative rules. Rule 1(1)(c) of those rules (1981 AACS R4.411) defines the term "elected or appointed public officials of state or local government" as:

> " . . . officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

There is, of course, no difficulty in determining whether an official has been elected to the official position. On the other hand, it is harder to determine which appointed officials are covered by the exemption in section 5(7)(b) and are not employees subject to registration pursuant to section 5(7)(c). These statutory provisions and rule 1(1)(c) must be read in conjunction with the various statutes governing the organization of school districts in order to resolve the issue.

The relevant statutes were enclosed with your letter. The law governing the appointment of administrators in first, second, third and fourth class school districts is found at MCL 380.132, 380.247, 380.346, and 380.471a respectively. The third and fourth class districts are required to appoint a superintendent for a contractual period of up to 5 years. First and second class districts are authorized to appoint a superintendent for a contractual term not in excess of 6 years.

All classes of districts are authorized to employ assistant superintendents, principals, assistant principals, guidance directors and other administrators for contractual periods not exceeding 3 years. In each case a notice of nonrenewal must be given prior to the end of the contract or the contract is automatically renewed for 1 year.

Each of the statutes cited above provides that an administrator, other than a superintendent, may be issued a notice of nonrenewal for reasons which are not arbitrary or capricious. This protection against arbitrary or capricious nonrenewal does not extend to a superintendent. A superintendent appears to be the only person whose contract may be not renewed without providing a reason.

Intermediate school superintendents are appointed for a period of not more than 4 years (MCL 380.623). They are assigned a number of duties by statute and non renewal may be accomplished without providing a reason.

In addition, it is clear that the statutes governing the operation of school districts set forth duties for school superintendents which indicate the policy-making nature of the position. The other administrators listed perform their

duties under the direction of the superintendent as employees of the school district rather than as officials. Among school administrators, only the superintendent appears to qualify for the exemptions set forth in section 5(7) of the Act for "elected or appointed public officials." Subsection (c) makes it clear that those who are employees can become lobbyist agents pursuant to the Act if they meet the requirements specified in section 5(5).

This letter is an interpretive statement of the provisions of the Act. A declaratory ruling has not been provided because the Michigan Association of School Administrators is not an "interested person" as prescribed in rule 3 (1981 AACS 4.413).

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

3-84-LI

January 24, 1984

Kenneth F. Light, President
Lake Superior State College
Sault Ste. Marie, Michigan 49783

Dear Mr. Light:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to colleges and college officials.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Pursuant to sections 5(4) and 7(1) of the Act (MCL 4.417), a college or university is required to register as a lobbyist if, in any 12 month period, it expends more than $1,000 for lobbying or more than $250 for lobbying a single public official. In addition, a person who lobbies on behalf of the school is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of $250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act's requirements are identified in section 5(7), which provides in relevant part:

> "Sec. 5. (7) Lobbyist or lobbyist agent does not include:
>
> (b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.
>
> (c) For the purposes of this act, subdivision (b) shall not include:
> (i) Employees of public or private colleges, community colleges, junior colleges or universities.
>
> (v) Appointed members of state level boards and commissions."

Your letter suggests that members of the Lake Superior State College Board of

Control are "elected or appointed public officials of state or local government" who are exempt from registration under the Act. However, Article 8 of the Constitution of 1963 provides that members of the controlling boards of institutions having authority to grant baccalaureate degrees, other than the boards of the University of Michigan, Michigan State University, and Wayne State University, shall be appointed by the governor. Section 5(7)(c)(v) specifically states that appointed members of state level boards and commissions are not public officials who are excluded from the definition of "lobbyist" or "lobbyist agent." Therefore, an appointed member of a college or university board who receives more than $250 from the school in a 12 month period for lobbying is a lobbyist agent who must register and file periodic reports as required by the Act.

You also ask whether the secretary of the Board of Control is an exempt public official under the Act. The broader issue raised by your inquiry is which college or university officers are excluded from the Act and which officers are employees who may become lobbyist agents. It is in this broader context that the issue will be addressed.

"Elected or appointed public officials of state or local government"--the category of persons who are exempt under section 5(7)(b)--is not defined anywhere in the Act. However, rule 1(1)(c) provides:

> "Rule 1. (1) As used in the act or these rules:
>
> (c) 'Elected or appointed public officials of state or local government' means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

A review of the Constitution and the enabling statutes of the state's colleges and universities indicates that each college or university president holds an office prescribed by statute. The president is designated the principal executive officer of the institution, is ex officio a member of the board, and may be removed at the pleasure of the appointing authority. As such, a college or university president is an elected or appointed public official as defined in rule 1(1)(c). It should be noted that a college or university president is not brought back into the Act by section 5(7)(c)(v). The president is not appointed to the board of control but is made an ex officio member by the Constitution.

There are, as you note, other college officers who appear to meet the definition found in rule 1(1)(c). However, rule 1(1)(c) cannot create a broader class of exempt officials than the legislature intended. Section 5(7)(c)(i) provides that employees of colleges or universities are not exempt officials. Therefore, resolution of the issue you raise depends upon whether the secretary of the Board of Control is considered a public official or an employee for purposes of the Act.

While "elected or appointed public official of state or local government" is not itself defined in the Act, section 6(2)(MCL 4.416) provides that a "public offi-

cial" is "an official in the executive branch or legislative branch of state government." Pursuant to sections 5(9) and (10), officials in the executive and legislative branches include elected or appointed officeholders and policymaking employees who are not under civil service. It appears that the legislature considered public officials to be persons who occupy policymaking positions. In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action.

With respect to colleges or universities, the president appears to be the only individual whose wide range of duties include the exercise of discretion or authority in matters involving the school. The secretary of the board and other officers have no autonomous authority but operate under the direction or control of the president and/or the board of control. As such, a college or university president is the only officer who is both an "elected or appointed public official" as defined by rule 1(1)(c) and a policymaker as contemplated by the Act. All other officers are considered employees who may become lobbyist agents upon meeting the requirements of section 5(5).

In conclusion, appointed members of a college or university board of control are subject to the Act's registration and reporting requirements pursuant to section 5(7)(c)(v). Similarly, the secretary of the board and other school officers are employees who, according to section 5(7)(c)(i), must register as lobbyist agents upon receiving compensation or reimbursement in excess of $250 in a 12 month period for lobbying. A college or university president is an elected or appointed public official who is excluded from the Act by section 5(7)(b), provided the president lobbies in the course or scope of office for no additional compensation.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 27, 1984

The Honorable Vernon J. Ehlers
Assistant Republican Floor Leader
House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Ehlers:

You have raised several issues and request an interpretation regarding the lobby act (the "Act"), 1978 PA 472.

Your first concern is a lobbyist might incorrectly report that you had received something which you did not actually accept. You request the Department notify all public officials once a year when their names appear on the reports of lobbyist agents. Section 8(5) of the Act, MCL 4.418, does deal with the subject matter of your concern. It states:

> "(5) Within a reasonable time after receipt of a request from an elected public official in regard to a report of a lobbyist or a lobbyist agent, the secretary of state shall report to the elected public official on any reported activity by the lobbyist or lobbyist agent in that report, and shall notify the elected public official of the specific occurance and the specific nature of the reported activity."

Under this section you or any other elected public official may request this information after each semi-annual reporting period. The statute indicates you must specify which lobbyist or lobbyist agent report(s) you want checked. Because the first report under the Act is not due to be filed until August 31, 1984, and the number of filers is still unknown, the Department has not yet determined what summaries might be compiled from the reported information. In addition, the Department does not know, at this time, how much money will be appropriated by the Legislature to enforce the Act or whether funds will be appropriated to computerize the records filed under the Act. If the records are computerized, it will be easy to create a list of all lobbyists and lobbyist agents who have reported the name of a particular public official. With a manual recordkeeping system, however, it would be very time consuming and expensive to check several thousand reports. Because it appears there will be about 1,900 public officials, your suggestion that the Department automatically notify all public officials whose names appear in lobbyist and lobbyist agent reports is not economically feasible.

Your second concern relates to the acceptance of honoraria by public officials. The definition of "gift" in section 4(1) of the Act, MCL 4.414 would include honoraria, "unless consideration of equal or greater value is received therefor." The Department's rules address honoraria in rules 1(1)(e) and 73, 1981 AACS R4.411, R4.473:

> "Rule 1(1)(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.
>
> "Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

Section 11(2) of the Act, MCL 4.421, and rule 71, 1981 AACS 4.471, prohibit a lobbyist or lobbyist agent from giving a gift to a public official.

You have suggested travel expenses should be deducted from honoraria and should be at the standard mileage rate paid legislators by the state. You feel meal and lodging expenses should be computed at levels allowed state employees and air travel should be limited to the tourist class airfare. Rule 1(1)(e) clearly specifies travel expenses, meals, and necessary lodging, as long as they are actual expenses, are not payments and, therefore, are not honoraria. Because the rules address this topic and do not limit these expenses to the cost of tourist class airfare or the standard meal and lodging expenses allowed state employees, the Department cannot administratively impose those limits which you suggest. All actual travel, meal, and necessary lodging expenses advanced or reimbursed by a lobbyist or lobbyist agent are excluded from honoraria.

A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seiminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is $500.00 or more, the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c).

With respect to using a standard mileage rate for automobile travel, actual expenses are excluded. However, actual automobile expenses can be difficult to compute if insurance, depreciation, tire wear, etc. are included. Therefore, the Department will assume the mileage rate paid legislators when reimbursed

with state funds (currently $0.295 per mile) is not more than the actual cost of automotive travel. Any greater figure must be supportable by the actual costs to operate the vehicle driven.

Section 11(2) and Rule 73 both indicate payment for an honorarium does not violate the Act if it does not exceed the value of the speech provided by the public official. To the extent that an honorarium exceeds the value received by a lobbyist or lobbyist agent paying the honorarium, a gift is made in violation of the Act. If the excessive honorarium is paid by a person who is not a lobbyist or lobbyist agent, the Act does not apply to the transaction, unless the excess is a payment made to influence legislative or executive action. Should the excess be paid by a non-lobbyist or non-lobbyist agent to influence legislative or executive action, the amount of the excess would be counted towards the person's $250.00 and $1,000.00 thresholds.

"Honorarium" is included within the definition of "expenditure" in section 3(2) of the Act, MCL 4.413. An expenditure "for lobbying made or incurred by a lobbyist, a lobbyist agent, or an employee of a lobbyist or lobbyist agent" (emphasis added) must be reported pursuant to section 8(1)(b) of the Act. Therefore, an honorarium made for lobbying must be reported by a lobbyist or lobbyist agent.

Your final concern is whether speeches given out-of-state to groups with no in-state dealings need to be reported at all. The Act makes no distinction between speeches made in Michigan and elsewhere or between groups which have dealings in Michigan and those which do not. The Act applies to any transaction between a public official and a person who meets the definition of lobbyist or lobbyist agent. If the person paying you for an out-of-state speech is not a lobbyist or lobbyist agent, that person would not be filing a report.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

5-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

January 31, 1984

James S. Mickelson, ACSW
Executive Director
Michigan Association of Children's Alliances
P.O. Box 20247, Suite 739
111 S. Capitol Avenue
Lansing, Michigan 48901

Dear Mr. Mickelson:

This is in response to your request for "clarification of the Lobbyist Registration Act," 1978 PA 472 (the "Act"). You indicate that "Regulations point out that no gift valued at $25.00 or more can be given to a legislator or public policy making official." You state it is customary for your Association to present a "Legislator of the Year Award" to a legislator whom you feel has done outstanding work in legislation which pertains to children and families. You indicate that this award has in the past consisted of "recognition . . . through (your) newsletter and . . . a plaque (for which you paid) . . . $35-$40." The plaque contains a statement that the legislator has received the "Legislator of the Year" award. You wonder if such plaque is a "gift" or whether the practice may continue after the implementation of the Act.

"Gift" is defined in section 4 of the Act (MCL 4.414) as:

> " . . . a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds $25.00 in any 1-month period, unless consideration of equal or greater value is received therefor . . . ."

A number of exclusions from this definition may be found at section 4(1)(a) - (e), but are not helpful in resolving the question you present.

Clearly the definition of "gift" as used in the Act contemplates that the particular item have an intrinsic value in and of itself. The type of plaque you describe is a symbolic citation or award based upon merit as determined by your

organization. Clearly it was not the intent of the Act to discourage symbolic recognition of commendable public service. Therefore, while the plaque you describe may have cost more than $25.00, its intrinsic value is substantially less, and therefore it is the department's belief that awards should not be classified as gifts unless the intrinsic or actual value is $25.00 or more.

One possible test could be the value of the plaque in the open market, i.e., could the recipient sell it for more than $25.00? The type of plaque you describe, although costing more than $25.00, could most likely not be sold for more than $25.00 and, therefore, is not a gift. Should a "plaque" consist of an item with intrinsic value clearly greater than $25.00, the item will be considered as being a gift, the donation of which is prohibited by section 11(2) of the Act.

The above is not a declaratory ruling because no such ruling was requested.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

7-84-LI

February 3, 1984

Joseph P. Bianco, Jr.
Vice President
Hudson's
1206 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Bianco:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to certain activities of Hudson's employees.

You indicate many of Hudson's officers and managers serve as officers or directors of community organizations such as The Economic Alliance of Michigan, Detroit Renaissance Corporation, New Detroit, Inc., United Foundation, and Detroit Institute of Art. Hudson's apparently encourages this type of community involvement and allows its officers and managers to work on behalf of community organizations during business hours and to use Hudson's research and secretarial staff, telephones, copy machines, etc. You ask how Hudson's and its officers and managers are subject to the Act when this time and effort results in lobbying on behalf of the community organizations.

The Act regulates all direct communication with officials in the executive and legislative branches of state government for the purpose of influencing legislative or administrative action. According to section 8(1)(b) of the Act, MCL 4.418, a lobbyist, such as Hudson's, must report:

1. Expenditures for food and beverages provided for public officials as specified in section 8(2).
2. All advertising and mass mailing expenses directly related to lobbying.
3. All other expenditures for lobbying.

It should be noted rule 56, 1981 AACS R4.456, requires that the food and beverage classification include all food and beverages provided public officials. In addition, the itemized information required by section 8(2) is to be reported when applicable. There is no purpose test for food and beverage; all must be reported, not just the food and beverages related to lobbying. The other two classifications apply only to lobbying expenses.

Hudson's encourages its officers and managers to be involved in the community organizations you have listed as part of Hudson's effort to be a good corporate

citizen of metropolitan Detroit. The economic connection between Hudson's business as a retailer and the charitable and booster activities of these organizations is so indirect the Legislature could not have intended that these pro bono activities be lobbying. This intention is supported by the fact that making these activities lobbying would discourage corporate participation on behalf of community organizations, an effect the Legislature would not seek. When the economic connection is merely tangential there is no lobbying because Hudson's is not paying the employee to lobby; it is paying the employee to assist the community organization. The Court in Pletz v Secretary of State, 125 Mich App 335 (1983), favorably quoted from a New Jersey case which defined the phrase "to influence legislation" as consisting of:

> " . . . direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals." 125 Mich App 335, 350

Under the circumstances you have raised, Hudson's is not directly, expressly, and intentionally communicating with public officials. Of course, should the lobbying efforts of one of these community organizations have a direct effect upon Hudson's economic interests, for example, lobbying for unemployment compensation reform, Hudson's would be compensating its employee for lobbying. If you have a situation where the community organization is going beyond traditional charitable and booster activity, it is suggested you request an interpretation concerning those specific facts.

As pointed out above, a lobbyist must report food and beverages provided public officials regardless of the purpose for providing the food and beverages. If a Hudson's employee buys lunch for a public official and Hudson's reimburses the employee for the lunch, the cost of the public official's lunch must be reported by Hudson's. This is true even if the entire lunch was spent discussing the legislative needs of a community organization or if there was no lobbying during the lunch.

A Hudson's employee who is lobbying on behalf of a community organization similar to the ones listed above is a lobbyist agent for that organization, if the employee is compensated or reimbursed by the organization and crosses the monetary threshold. Any compensation or reimbursement from Hudson's for lobbying on behalf of the organization is not reportable by Hudson's, the employee, or the organization and is not counted toward the threshold of $250.00 which makes a person a lobbyist agent. The employee is a lobbyist agent only if the total compensation and reimbursement received in a twelve month period from Hudson's for lobbying on behalf of Hudson's and from community organizations for lobbying on behalf of the organizations is more than $250.00. Once a person crosses this threshold and becomes a lobbyist agent, the person must report all compensation and reimbursement received for lobbying from an entity on whose behalf the person was lobbying. Perhaps this can best be described with a few examples:

A. Employee A does no lobbying except as an officer in New Detroit. Some of the lobbying is done on Hudson's time and using Hudson's

materials and staff. New Detroit does not compensate or reimburse A except for travel expenses (which are excluded from the Act). Neither Hudson's nor New Detroit has made any reportable expenditures. Employee A has received no compensation or reimbursement which counts toward a lobbyist agent threshold.

B. Employee B has been compensated $200.00 lobbying for Hudson's and reimbursed $100.00 for non-travel lobbying expenses by New Detroit. Employee B is a lobbyist agent who must register as such. Hudson's must report the $200.00 and New Detroit must report the $100.00 as lobbyists, unless they have not yet reached the lobbyist thresholds, in which case the dollar amounts are counted toward the thresholds.

C. Employee C is a lobbyist agent for Hudson's. Hudson's and New Detroit are both lobbyists. Employee C spends three hours of Hudson's work time at $25.00 per hour writing a letter to be sent to every legislator lobbying on behalf of New Detroit. The letter is copied and addressed by Hudson's at a cost of $50.00. Employee C buys $39.60 in stamps and is reimbursed that amount by New Detroit. Hudson's reports no expenditures; New Detroit reports expenditures of $39.60; and Employee C reports expenditures of $39.60.

You also ask whether Hudson's must account for its costs to analyze proposed legislation and administrative regulations. If Hudson's has not decided to lobby on a bill, any analysis done for the purposes of assisting the decision-maker in deciding whether to lobby is not counted. Once Hudson's has decided to lobby for or against a bill, the cost of preparing analysis and data summaries which are directly communicated to a legislator are reported. For instance, if you spend five hours researching and writing a memorandum to the person or committee who decides Hudson's official position on legislative bills suggesting Hudson's should support a bill, Hudson's decision is to support the bill, and your memo is retyped as a letter to the sponsor of the bill, then only the cost of retyping and mailing the letter are reported under the Act.

Finally, you ask whether you must report the cost of employee benefits when an employee's time is used for lobbying. Only the salary or wages of an employee are reported. Benefits, such as insurance, vacation pay, holiday pay, and retirement, are not included in the cost of the employee's time for the purposes of the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

8-84-LI

February 3, 1984

Hannes Meyers, Jr.
Roper, Meyers, Knoll & Jouppi
11 East Main
Zeeland, Michigan 49464

Dear Mr. Meyers:

This is in response to your inquiries concerning applicability of the lobby act (the "Act"), 1978 PA 472, to cities, city attorneys and city clerks.

Your letter of December 5, 1983, states as follows:

> "With respect to myself as City Attorney, I am appointed by the City Council or City Commission in accordance with the Cities Home Rule Charter. I do not have a formal written contract, I serve at the pleasure of the Council or Commission. My work is compensated for on an hourly basis and the hourly rate is set by the Council or Commission.
>
> With respect to the Clerks of the municipalities I represent, all are appointed by the Council or the Commission in accordance with the Cities Home Rule Charter. All are compensated by a salary, the amount of which is set by the Council or Commission.
>
> The usual scenario for contact with a State Senator or State Representative goes something like this: The Council or Commission receives notice of proposed legislation that has or might have an impact on the City, for example, a bill allowing a school district to collect summer real estate taxes that involves the City or City Treasurer.
>
> The City Council or City Commission may take a formal position on such a bill and instruct the City Clerk or the City Attorney to correspond with its State Senator or State Representative and urge adoption or rejection of the proposed bill."

You conclude by asking whether this activity subjects the city, city attorney and/or city clerk to the requirements of the Act.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." Pursuant to section 5(1), "legislative action" includes the "introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay or an official action" by a legislator on any pending or proposed matter. Thus, when a city directs its attorney or clerk to contact a state senator or representative and urge the adoption or rejection of a proposed bill, both the city and the individual are engaged in lobbying.

Persons who expend or are compensated a certain amount for lobbying are required to register with the Secretary of State as lobbyists or lobbyist agents. "Lobbyist" and lobbyist agent" are defined in subsections (4) and (5) of section 5 as follows:

> "(4) 'Lobbyist' means any of the following:
> (a) A person whose expenditures for lobbying are more than $1,000.00 in value in any 12-month period.
> (b) A person whose expenditures for lobbying are more than $250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official.
> (c) For the purpose of subdivisions (a) and (b), groups of 25 or more people shall not have their personal expenditures for food, travel, and beverage included, providing those expenditures are not reimbursed by a lobbyist or lobbyist agent.
> (d) The state or a political subdivision which contracts for a lobbyist agent.
>
> (5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount of $250.00 in any 12-month period for lobbying."

Pursuant to section 6(1) of the Act (MCL 4.416), a "person" is an individual, a business or any "organization or group of persons acting jointly, including a state agency or a political subdivision of the state." According to sections 2(4) and 3(2) (MCL 4.412 and 4.413) and rules 21 and 22, 1981 AACS R4.421 and R4.422, compensation paid or payable to employees for that portion of their time devoted to lobbying and all other payments related to lobbying, except travel expenses, are combined when calculating the threshhold amounts established in sections 5(4) and (5). Therefore, if a city, in any 12 month period, pays its attorney and/or clerk a combined amount of more than $1,000 for lobbying or more than $250 on lobbying a single public official, the city must register as a lobbyist and file periodic reports. If either the city attorney or city clerk receives more than $250 in salary for lobbying and/or reimbursement for lobbying expenses the attorney or clerk will also have to register as a lobbyist agent, unless otherwise provided by the Act.

Persons who are exempt from the Act's registration and reporting requirements are identified in section 5(7), which states in relevant part:

"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(ii) Employees of townships, villages, cities, counties or school boards."

In the attached letters to Mr. Don M. Schmidt and Mr. Kenneth F. Light, dated January 13, 1984, and January 24, 1984, respectively, the Department indicated the exemption found in section 5(7)(b) applies only to elected or appointed public officials who serve in autonomous, policymaking capacities. According to your letter, both the city attorney and city clerk operate under the direction or control of the city council or commission. Consequently, the city attorney and city clerk are not exempt public officials but are city employees who are subject to the Act's provisions pursuant to section 5(7)(c)(ii).

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

6-84-LI

LANSING

MICHIGAN 48918

February 3, 1984

Mr. William F. Harsen, M.P.H.
Executive Vice President
United Health Organization
777 Livernois
Ferndale, Michigan 48220

Dear Mr. Harsen:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472. I understand that United Health Organization ("U.H.O.") is a non profit Michigan corporation which engages in "two principal activities: disease detection and community health education." In this latter work you print and distribute 5 newsletters per year to a list of some 500 persons, "some of whom may be public officials." Your specific question is:

> "If we write articles in this letter about current pending health legislation and said articles reflect a position on this legislation, is this activity considered lobbying as defined in the . . . Act?"

"Lobbying", as that term is used in the Act, is defined as:

> " . . . communicating directly with an official in the executive . . . or . . . legislative branch of state government for the purpose of influencing legislative or administrative action . . . ." (MCL 4.415(2))

"Influencing" means "promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies or analysis." (MCL 4.415(3)) (emphasis added)

You advise that your newsletter is sent to persons who "may be public officials." You should be aware that the term "public official" has a specific meaning when used in the context of the Act. MCL 4.416(2) defines "public official" as "an official in the executive or legislative branch of state government," and "official in the executive branch" includes "governor, lieutenant governor, secretary of state, attorney general, member of any state board or commission, or an individual who is in the executive branch of state government and not under civil service . . . (and) includes an individual who is elected or appointed and has not yet taken, or . . . who is nominated for appointment to, any of the offices" set forth above. "An official in the execu-

tive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity" (MCL 4.415(9)).

An "official in the legislative branch" includes " . . . a member of the legislature, a member of an official body established by and responsible to the legislature or either house thereof, or employee of same other than an individual employed by the state in a clerical or nonpolicymaking capacity." (MCL 4.415(10))

The Michigan Court of Appeals in Pletz v Austin, 125 Mich App 355 (1983), in discussing section 5(7)(a) of the Act, analyzed the press exemption as follows:

> "We believe that the Legislature intended that communications with public officials for purposes of gathering and disseminating news to be outside of the act's coverage
>
> * * *
>
> The press exemption properly excludes the acts of talking and writing to public officials for purposes of gathering news and information for dissemination.
>
> * * *
>
> The crucial element . . . is that communications to public officials were not made 'for the purpose of influencing official action.'"
> 125 Mich App 355, 361-362

In the light of this determination by the Court of Appeals, it is the Department's position that gathering and assembling of news is not lobbying, nor is talking or writing to public officials to gather news and data for dissemination. Also, the publication of news, including editorial comment and the distribution of the publication to a public official is not lobbying unless the sole purpose of the publication is lobbying. In other words, even though a public official receives a publication because he or she is a subscriber, a member of the organization that publishes the publication, or a recipient of a complimentary copy, the publication costs are not lobbying expenses because there is no "lobbying."

Because you failed to adequately describe the publication about which you are concerned, it is impossible to specifically answer your question. Therefore this response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

1-84-LD

February 7, 1984

Mr. S. Don Potter
Michigan Municipal Electric Association
818 Cowley Avenue
East Lansing, Michigan 48823

Dear Mr. Potter:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to an annual Legislative Reception and Fish Fry held by the Michigan Municipal Electric Association ("MMEA"). You set forth the following facts in your letter:

> "All members of the Michigan House and Senate are individually invited, and in the past their staff members also have attended in significant numbers. Many MMEA Members and Associate Members also attend. Members are persons directly involved in the operation of municipally-owned electric utilities, usually managers, employees, and governing body members, the latter being either appointed or elected officials. Associate Members are representatives of companies or firms who provide goods and services to municipally-owned electric utilities. Attendance on the part of Members and Associate Members is purely voluntary, and they receive no compensation for the time spent or any expenses involved to attend the function from any source. Each Member and Associate Member donates $50.00 per person to help defray the costs of this activity."

Your questions are set out and answered below:

> "1. Is this function considered lobbying?"

"Lobbying" is defined in section 5(2) of the Act, MCL 4.415, as "communicating directly with . . . an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The purpose of holding the reception includes creation of good will and providing a place for members and associate members to meet with each other and with Legislators. This is an annual event which is scheduled regardless of whether there are bills pending in the Legislature of concern to MMEA or its members and associate members. While some lobbying may well take place at the reception, the event itself is not lobbying.

"2. If so, how should the expenses be accounted for?"

Section 8(1)(b)(i) of the Act, MCL 4.418, requires lobbyist and lobbyist agents to report "expenditures for food and beverage provided for public officials as specified in subsection (2)." Section 8(2) states:

> "(2) Expenditures for food and beverage provided a public official shall be reported if the expenditures for that public official exceed $25.00 in any month covered by the report or $150.00 during that calendar year from January 1 through the month covered by the report. The report shall include the name and title or office of the public official and the expenditures on that public official for the months covered by the report and for the year. Where more than 1 public official is provided food and beverage and a single check is rendered, the report may reflect the average amount of the check for each public official. If the expenditures are a result of an event at which more than 25 public officials were in attendance, or, are a result of an event to which an entire standing committee of the legislature has been invited in writing to be informed concerning a bill which has been assigned to that standing committee, a lobbyist or a lobbyist agent shall report the total amount expended on the public officials in attendance for food and beverage and shall not be required to list individually. In reporting those amounts, the lobbyist or lobbyist agent shall file a statement providing a description by category of the persons in attendance and the nature of each event or function held during the preceding reporting period." (emphasis added)

Unlike the other two general categories of expenditures which must be reported, expenditures for food and beverage provided public officials are not qualified by the phrase "for lobbying." This is a legislative determination that all food and beverages provided public officials by a lobbyist or lobbyist agent must be reported, regardless of the reason for those expenditures. Because MMEA is a lobbyist and is providing food and beverage to public officials, MMEA must report the expenditures for food and beverage provided for public officials.

"3. What sort of records should be kept? Must we keep a record of each attendee by name and address? In the past, some 75 Senators and Representatives have attended."

As indicated in the emphasized portion of section 8(2) quoted above, since more than 25 public officials will be in attendance, MMEA does not need to list the expenditures by individual public official. The records MMEA keeps must be adequate to compute the total amount spent for food and beverage provided public officials. Section 9(1)(b) also requires MMEA to record the names of all public officials in attendance and the nature of the event. In addition, should MMEA directly communicate with public officials at the reception for the purpose of influencing administrative or legislative action, MMEA must report any expenditures made for the communication and keep records sufficient to create the report.

"4. Does the $50.00 donated by each Member and Associate Member count toward the 'threshold' described in the Lobby Registration Act? If so,

whose threshold, the individual, his or her employer, or the Association's?"

As indicated in the answer to your first question, the event is not lobbying. The $50.00 donation to defray the expenses of the reception is not an expenditure for lobbying. It does not count toward the threshold for any person to become a lobbyist or lobbyist agent and is not reported by any lobbyist or lobbyist agent.

"5. If no money was collected, and the expenses were paid by Association funds, would Members and Associate Members attending be required to report under the Act, and if so, what?"

This question is answered in the negative provided those in attendance do not lobby.

"6. Is the time contributed by those persons who actually fry the fish a reportable item? These persons are employed by the Village of Sebewaing, the City of Bay City, and the City of Lansing. They receive no compensation for their services either from their employers or the Association, nor are they reimbursed for their expenses. They contribute their time and expenses on a voluntary basis. If this is a reportable item, is it reportable at the Association, municipal, individual level, or a combination thereof?"

Since the cooks are not compensated or reimbursed by either MMEA or their employers, there is no expenditure being made. Also, they are not lobbying. Their time is not reportable.

"7. Must attending Members and Associate Members report under the terms of the Act even if they do not attempt to influence legislation or administrative action? Would an affidavit to the effect the (sic) no "lobbying" was conducted signed by those Members and Associate Members who attended have any relationship to the reporting requirements, or is it assumed that such a function is lobbying on its face?"

Attending members and associate members do not report their respective $50.00 donations as stated in the answer to your fourth question. This is true even if they do lobby and are reimbursed by their employers. Consequently, an affidavit is not needed to prevent the donations from being reported.

However, any lobbyist agent who actually lobbies at the reception would report any compensation received for the time spent lobbying. Also, any expenditures made or reimbursed for the lobbying would be reported. A person who is not a lobbyist agent would count toward his or her threshold any compensation or reimbursement received.

This response constitutes a declaratory ruling relating to the specific facts and questions you have presented.

Sincerely,

Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

10-84-L1

February 7, 1984

The Honorable Gary M. Owen
Speaker of the House
State Capitol Building
Lansing, Michigan 48909

Dear Representative Owen:

This is in response to your request for a clarification and interpretation of issues concerning the lobby law (the "Act"), 1978 PA 472. Since you ask several questions, they will be answered as presented.

I.

> "Lobbyists, from time to time, because of their expertise in a given field, may be called upon by a public official to provide technical assistance or research. The question is:
>
> > Is research and technical material having a value exceeding $25, that is compiled by a lobbyist at the behest of a public official, to be used in deciding the propriety of legislation, a gift within the meaning of section 4 of the Act?"

Lobbying is in part defined in section 5(2) of the Act (MCL 4.415) as " . . . communicating directly with a public official . . . for the purpose of influencing (legislation) . . . ." Subsection (3) of section 5 defines influencing to include " . . . the providing of . . . information, statistics, studies, or analysis." Pursuant to the legislative mandate of section 16 (MCL 4.426) this office has promulgated rule 1(1)(d)(iv) (1981 AACS R4.411) which defines expenditures for lobbying to include:

> "(iv) An expenditure for providing or using information, statistics, studies or analysis in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

The Michigan Court of Appeals in Pletz v Secretary of State, 125 Mich App 335, 369 (1983) in upholding this rule adopted the statement:

> "To eliminate the 'but for' rule, 1(d)(iv), is to eliminate information on a major expenditure. With today's complex society and better educated and more sophisticated public officials, it is information, statistics, studies, and analysis that are major tools for the lobbyists and lobbyist agents' art. When the expenditure for the information, statistics, studies, or analyses would not have been incurred but for the direct communication, the expenditure is as much a part of the direct communication as eyeball to eyeball communication."

Thus it is quite clear that providing information as contemplated by your question is lobbying and its cost is an expenditure and not a gift.

II.

> "Many conflicts may arise between a public official and long-time personal friends or family members who may also be 'lobbyists,' or 'lobbyist agents,' as defined by the Act. The following are a series of questions to help clarify allowable activity within those relationships.
>
> May a 'lobbyist,' 'lobbyist agent,' etc., give a gift or present to a public official and his/her spouse that exceeds $25.00 on the occasion of:
> (a) a wedding of the public official?
> (b) a wedding involving a member of the public official's immediate family?
> (c) an anniversary (wedding or otherwise) of a public official?
> (d) a birthday of a public official?
> (e) a catastrophic event such as a terminal illness within a public official's family? and
> (f) a foundation or charitable trust set up in honor, or at the behest of, the public official?"

The issues raised in this question fall into four distinct categories. These categories would involve gifts or presents that would be made (a) to a public official (b) to a public official's immediate family, (c) to more than one person including a public official, and (d) to a foundation or charitable trust set up in honor or at the behest of the public official. Three different provisions must be read together to answer your question: the definition of gift in section 4(1) (MCL 4.414), the prohibition against the making of gifts by lobbyist and lobbyist agents in section 11(2) (MCL 4.421), and the clarification that lobbyists and lobbyist agents may give gifts to people who are not public officials in rule 71 (1981 AACS 4.471). The Michigan Court of Appeals in Pletz specifically viewed section 11(2) as prohibiting gifts by lobbyist or lobbyist agents to public officials only:

> "Contrary to plaintiffs' position on this issue, the above-quoted sec-

tion of the act does not prohibit a lobbyist or lobbyist agent from making a gift to an individual who is not in the category of public official. It would defy credulity to believe that the Legislature intended to forbid lobbyists from making gifts to relatives, friends, or any other non-public official. A reasonable interpretation of this section is that only loans and gifts made by lobbyists or lobbyist agents to public officials are regulated. This section must be read in conjuction with the act's related provisions. In so doing, we interpret the statute to exclude from coverage gifts by lobbyists or lobbyist agents to non-public officials." 125 Mich App 335, 358

Under this interpretation only gifts to public officials are specifically prohibited by the Act. Thus, in answer to your specific inquiry, gifts would be prohibited under the circumstances listed in subpart (d) of your question. An immediate question arises in the event a gift is given to the public official's immediate family by a lobbyist or lobbyist agent. Care must be taken by the public official that he/she does not receive benefit from the gift, "anything of value (exceeding) $25.00 in any 1-month period." With this caveat in mind a gift to a member of the public official's immediate family is permissible, as in subparts (b) and (e) of your question. Where a gift is given to more than one person which includes a public official, i.e., a public official and spouse, then the gift will be deemed to be shared equally among all members of the group and the "share" of the public official must not be of value exceeding $25.00 in any 1-month period. Thus gifts as outlined in subparts (a) and (c) would be allowed as just described as long as the value of the gift did not exceed $50.00.

The final part of your question involving foundations or trusts must be looked at again with the criteria set forth in the Act. It is clear that a lobbyist or lobbyist agent may make a gift to a foundation or charitable trust where no benefit prohibited by the Act goes to the public official either now or in the future. For example, a lobbyist may make a donation to the American Cancer Society in any amount in the name of the public official. Thus, the answer to subpart (f) of your question is a qualified yes.

In the area of gifts, the public official must always keep in mind the intent of the Act. He/she must not accept " . . . a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value . . . " in violation of the Act. Gifts that are given to a non-public official where the intent is to benefit the public official are not permitted. Gifts to another person in any amount are allowed if it appears from all the facts that there is no intention to circumvent the Act.

III.

"Many questions have arisen regarding the interpretation of 'Honorarium' as found in Rule 4.473. The Rule reads as follows:

'An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received.'

The questions regarding this provision are as follows:

1. What is meant by the phrase ' . . .clear from all of the surrounding circumstances . . .'? In other words, what circumstances will be looked upon by your office when making this determination?

2. (a) Are expenses, such as meals, travel arrangements and lodging accomodations included in the term honorarium?
(b) If not, then are they considered 'gifts' within the meaning of section 4 of the Act?

3. What amount of money, or anything of value, will be considered unreasonable as an honorarium for:
(a) one speech?
(b) more than one speech?
(c) one seminar?
(d) weekend participation in a conference?

4. What criteria will be used when determining whether the travel and lodging expenses of a public official are reasonable?

That is, will such criteria as location of the conference or convention be taken into account? Whether the public official travels first class or coach, or whether the average of all charges of lodging accomodations in the area must be taken into account before deciding upon a motel/hotel?"

The definition of "gift" in section 4(1) of the Act would include honoraria, "unless consideration of equal or greater value is received therefor." The Department's rules address honoraria in rules 1(1)(e) and 73 (1981 AACS R4.411, R4.473):

"Rule 1(1)(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.

. . .

"Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

Section 11(2) and rule 71 prohibit a lobbyist or lobbyist agent from giving a gift to a public official.

Rule 1(1)(e) clearly specifies travel expenses, meals, and necessary lodging, as long as they are actual expenses, are not payments and, therefore, are not honoraria. All actual travel, meal, and necessary lodging expenses advanced or reimbursed by a lobbyist or lobbyist agent are excluded from honoraria.

A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is $500.00 or more, the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c) (MCL 4.418).

With respect to using a standard mileage rate for automobile travel, actual expenses are excluded. However, actual automobile expenses can be difficult to compute if insurance, depreciation, tire wear, etc. are included. Therefore, the Department will assume the mileage rate paid Legislators when reimbursed with state funds (currently $0.295 per mile) is not more than the actual cost of automotive travel. Any greater figure must be supportable by the actual costs to operate the vehicle driven.

Section 11(2) and Rule 73 both indicate payment for an honorarium does not violate the Act if it does not exceed the value of the speech provided by the public official. In determining the value of a speech, the public official must look at what other similar speakers in similar circumstances receive for a similar speech. The facts in a particular situation will determine the "all surrounding circumstances" as mandated in Rule 73 and must be judged as these situations arise.

To the extent that an honorarium exceeds the value received by a lobbyist or lobbyist agent paying the honorarium, a gift is made in violation of the Act. If the excessive honorarium is paid by a person who is not a lobbyist or lobbyist agent, the Act does not apply to the transaction, unless the excess is a payment made to influence legislative or executive action. Should the excess be paid by a non-lobbyist or non-lobbyist agent to influence legislative or executive action, the amount of the excess would be counted towards the person's $250.00 and $1,000.00 thresholds.

IV.

"The following question concerns the reporting requirements imposed upon lobbyists. As you know, some lobbyists serve many clients, otherwise known as multi-client lobbyists. The question is:

If a lobbyist provides food and beverage for immediate consumption and the lobbyist has many clients and many employees, who must report expenditures made for the provision of food or beverage on behalf of a public official?

(a) client of lobbyist?
(b) lobbyist?
(c) lobbyist agent or employee?"

Section 8(1) of the Act requires that lobbyists and lobbyist agents file reports as prescribed by the Act. Section 5(6)(a) includes in the definition of "representative of the lobbyist" an employee of the lobbyist or lobbyist agent. Section 8(1)(b) includes in reports to be filed by a lobbyist or lobbyist agent the expenditures made by a representative of the lobbyist. Under rule 23(3) (1981 AACS R4.423) an employee of a lobbyist agent may also become a lobbyist agent and may also have to file reports under section 8, if he/she exceeds the $250.00 threshold amount established in section 5. The terms client or client of a lobbyist are not defined in the Act but in the context of your question it is assumed that by those terms you mean a person who makes expenditures for lobbying. Such a "client" under the provisions of the Act would be a lobbyist and be required to make the necessary reports. A "multi-client lobbyist" is a lobbyist agent under the Act and also is required to make reports.

Much of the confusion surrounding the terms lobbyist agent results from the Act establishing definitions which are different from commonly understood meanings in use prior to the Act. Under the Act, for example, where manufacturing company, ABC, Co. hires XYZ, Inc. to further its interests before the Legislature then ABC, Co. is a lobbyist and XYZ, Inc. is a lobbyist agent. If XYZ, Inc. has among its personnel J. Smith, who regularly communicates directly with public officials, J. Smith is also a lobbyist agent. When J. Smith purchases food or beverage for a public official with his/her own money or credit card, J. Smith would report the expenditure in the food and beverage category. If either ABC, Co. or XYZ, Inc. reimburse J. Smith for the food and beverage, that person would report the reimbursement as an all other lobbying expense. If XYZ, Inc. reimburses J. Smith and ABC, Co. reimburses XYZ, Inc., each would report its own reimbursement as an all other lobbying expense. When J. Smith purchases food or beverage for a public official with a credit card or tab charge in the name of ABC, Co., the food and beverage expense would be reported by ABC, Co. If the credit card or tab charge is in the name of XYZ, Inc., the expense would be reported by XYZ, Inc. If ABC, Co. then reimburses XYZ, Inc., then ABC, Co. would report the reimbursement as an all other lobbying expense.

XYZ, Inc. may also employ D. Brown who is a clerical person in its office and who is occasionally reimbursed by XYZ, Inc. for lobbying or food and beverage expenses, but he/she does not reach the Act's threshold amounts. D. Brown would be an employee of the lobbyist agent and those expenditures would be reported by XYZ, Inc. If ABC, Co. reimburses XYZ, Inc. for D. Brown's expenses, then ABC, Co. would also report the expenditure as an all other lobbying expense. On the other hand, if ABC, Co. pays the restaurant for the meal (for instance, D. Brown uses ABC, Co.'s credit card) or reimburses D. Brown directly for the meal (rather than reimbursing XYZ, Inc.), D. Brown would be a representative of the lobbyist. Under these circumstances, ABC, Co. would report the expenditure or reimbursement as a food and beverage expense, and XYZ, Inc. would not report the cost of the meal.

Where a person under any of the defined groups described above is required to report expenditures for food and beverage, the reporting category is determined by whether the payment is reported by another party. If a lobbyist or lobbyist agent pays for the food and beverages directly to the restaurant or other business that has provided the comestibles, the expenditure would be reported as "Food and Beverage" on the lobby registration schedule A. Any person who reimburses these expenditures would report the expenditures in the category "all other expenditures", unless the person being reimbursed is not a lobbyist agent who is reporting the meal as a food and beverage expense. This insures that each meal is reported as food and beverage only once.

V.

"The next two questions deal with public officials who are also members of organizations which engage in lobbying activity, e.g., Chamber of Commerce, National Organization of Women.

1. If a public official is a member of an organization which meets the lobbying requirements according to the Act, and that public official is provided travel and expense money for the purpose of furthering the goals of that organization, is that public official:

   (a) in violation of section 11 of the Act?
   (b) solely acting as a member of that organization?
   (c) receiving a gift as a public official?

2. If a public official is reimbursed for his/her expenses when seeking to influence legislation while in the course of his/her official duties, must that public official comply with the registration and reporting requirements which apply to lobbyists?"

For purposes of your question the discussion here will be limited to Legislators. The inclusion or exclusion of other public officials will be

decided as the particular facts of their circumstances arise. Section 11(4) provides that:

> "(4) A public official, other than an individual who is appointed or elected to a board or commission and is not an ex officio member or prohibited by law from having other employment, shall not accept compensation or reimbursement, other than from the state, for personally engaging in lobbying. A person who violates this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisoned for not more than 90 days, or both."

This section makes it quite clear that a Legislator cannot have his/her expenses reimbursed by anyone other than the state. A Legislator who engages in activities that would normally be considered lobbying does not have to report his/her salary or state reimbursed expenses since a Legislator cannot be a lobbyist or lobbyist agent under section 5(7)(b). Where that Legislator is a member of an organization that engages in lobbying and the Legislator is furthering the goals of that organization which are not of a lobbying nature, the Act does not prohibit the payment of travel and expenses by the organization. Reimbursement of actual expenses would not be a gift since the organization would receive value equal to the reimbursment. But where the Legislator engages in lobbying activities for the organization of which he/she is a member, section 11 would prohibit payment for these activities. Since payment for these activities is unlawful, the reporting requirements of the Act are inapplicable.

VI.

> "The Secretary of State has gone on record as saying that if a lobbyist makes an expenditure of $150 or more on any one public official in a calendar year, the name and title of the public official must be included in the report the lobbyist prepares for the Secretary of State.
>
> Given the fact that there is a $25-per-month exemption from reporting for food and beverage that is meant for immediate consumption that is provided a public official, and that there are two reports to be issued annually by the lobbyist to the Secretary of State, should not the exemption for a calendar year be $300 instead of $150 (12 months x $25 = $300)?
>
> Instead of $150 per calendar year, should it not be $150 per reporting period (12 months x $25 = $300)? Three hundred dollars divided by two reporting periods equals $150 per reporting period."

Rule 56 (1981 AACS 4.456) provides that:

> "Rule 56. (1) A lobbyist or lobbyist agent filing a statement or report under section 8 of the act shall, in determining the total

amount expended for the category termed food and beverage for public officials, report 1 amount reflecting all expenditures for food and beverage provided to public officials during a reporting period, regardless of amount.

(2) The itemized information required by section 8(2) of the act shall be reported in each applicable case."

Section 8(2) establishes threshold amounts that determine whether reports of expenditures for food and beverage provided a public official need identify the public official by name. These amounts are a twofold test (a) $25.00 in any month or (b) $150.00 during a calendar year. Under this test if the covered expenditures for example, exceed $25.00 in May of 1984, reporting would occur in the report that covers the period December 31, 1983 to July 31, 1984. In further example, if there were expenditures in April, May, July, August, September, November and December 1984, none of which exceeded $25.00 but in aggregate exceeded $150.00 then the expenditures would have to be reported in the report covering the calendar year 1984. Where the $25.00 or $150.00 threshold amounts are exceeded and reported in the first reporting period, they are again reported as part of a cumulative total in the report covering the calendar year.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos
Director
Office of Hearings and Legislation

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MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

9-84-LI

LANSING
MICHIGAN 48918

February 7, 1984

Dr. Martha Bigelow
Director
Michigan History Division
Third Floor, Mutual Building
Lansing, Michigan 48918

Dear Dr. Bigelow:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the participation of Department of State personnel in the Friends of the Capitol (the "Friends").

You indicate you, Kathryn Eckert (the Historic Preservation Supervisor), and Brian Conway (Historical Architect) are involved with the Friends. You serve on the Board of Trustees, Ms. Eckert is Treasurer and serves on the Executive Committee, and Mr. Conway serves on the Preservation Committee. All three of you support the Friends at least partly because of your employment with the Department. The Capitol is a building of historical significance to Michigan. While you might volunteer your time if you did not work in the History Division, there would always be representatives of the History Division participating in the Friends.

A lobbyist is a person whose expenditures for lobbying exceed a threshold, and a lobbyist agent is a person who is compensated or reimbursed for lobbying in excess of $250.00 in a twelve month period. Lobbyists must report expenditures, and lobbyist agents must report compensation and reimbursement. Once your total compensation and reimbursement for lobbying from all sources exceeds $250.00 in twelve months, you must register as a lobbyist agent and file biannual reports. Similarly, the person who compensates or reimburses you for lobbying (the Department or the Friends) becomes a lobbyist and must report the compensation or reimbursement once it spends in a twelve month period more than $250.00 lobbying a single public official or $1,000.00 for all lobbying.

Volunteer lobbying efforts where the person doing the lobbying is not compensated or reimbursed is not counted toward the lobbyist or lobbyist agent thresholds and is not reported. To the extent you lobby on your own time, and are not reimbursed for expenses, and do not spend your own money lobbying (other

than the cost of travel), you do not need to keep records or report your lobbying activities. However, when you lobby for the Department, are compensated for your time by the Friends, or are reimbursed for your expenses by the Department or the Friends, records and reports of your activity must be made. Compensation and reimbursement for lobbying includes time spent directly communicating with public officials and time spent preparing for the direct communication.

You, Ms. Eckert, and Mr. Conway are all professional, salaried employees of the Department of State. As such, you are not eligible for overtime pay and are expected to perform your job outside normal business hours, if necessary. Therefore, if you are a lobbyist agent for the Department, all lobbying consistent with your position in the Department is compensated lobbying time. You cannot lobby after normal business hours and consider it voluteered time. The important issue is whether you or your employees are lobbyist agents for the Department. Once you are, you are recognized as an official spokesperson for the Department before public officials.

In actuality, none of you is a registered lobbyist agent for the Department. The Department has made a conscious decision to concentrate its lobbying efforts in as few employees as possible. Because you are not an official spokesperson for the Department, at least for the purpose of relaying the Department's position to public officials, lobbying activities are not duties for which you are compensated by the Department. As lobbying is not part of your job, you are able to volunteer your time to lobby for outside organizations, such as the Friends. To lobby for the Friends without your activity being reportable by the Department, you must do all of the following:

1) Lobby outside normal working hours or take annual leave for the time you lobby.

2) Identify yourselves as board members of the Friends.

3) Not identify yourselves as employees or representatives of the Department or the History Division.

4) If the public official is aware of your employment by the Department, expressly state that you are not espousing the Department's position.

5) Limit your communication with the public official to the business of the Friends.

Of course, you may choose the simpler method of absenting yourselves from any direct communication with public officials or preparation of materials used to directly communicate with public officials.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 23, 1984

Conrad L. Mallett, Jr.
Director, Legal and Governmental
Affairs
Brian P. Henry
Assistant Legal Advisor
Office of the Governor
State Capitol
Lansing, Michigan 48909

Dear Messrs. Mallett and Henry:

This is in response to your letter of January 11, 1984, raising questions with respect to the application of the lobby act, 1978 PA 472, (the "Act"), to employees of the Department of Social Services who prepare materials used in lobbying but do not themselves communicate directly with any public official.

The specific issues which concern you are set forth in your letter as follows:

> "A. Whether a person who is compensated for the preparation of materials for use in lobbying but who does not personally communicate directly with any public officials on the department's behalf, must be named in section 6 of Form LR-1 as a person who is 'employed, reimbursed or compensated for lobbying.'"
>
> "B. Whether a person who is reimbursed in excess of $250 in a year for preparing materials for use in lobbying but who receives no compensation for personally communicating with a public official is a 'lobbyist agent' as defined in the act and must register with the Department of State and report his/her expenditures to the department for inclusion in the department's periodic reports."

The Act establishes registration and reporting requirements for certain defined persons. Those defined as lobbyist agents are persons who receive payment for engaging in lobbying as defined in section 5(1) of the Act (MCL 4.415). The pertinent portion of the definition states lobbying:

> " . . . means communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Section 5(4) of the Act and Rule 24 of the rules promulgated to implement the Act, 1981 AACS R4.424, make it clear that a state executive department is a lobbyist.

Section 8 of the Act (MCL 4.428) sets forth the reporting requirements for lobbyists and lobbyist agents. The rules include a definition for the terms "expenditures related to the performance of lobbying" and "expenditures for lobbying." Rule 1(d), 1981 AACS 4.411(d) states as follows:

> "(d) 'Expenditures related to the performance of lobbying' and 'expenditures for lobbying' includes all of the following expenditures of a lobbyist or lobbyist agent:
> (i) A payment made on behalf of a public official for the purpose of influencing legislative or administrative action.
> (ii) A payment made to influence legislative or administrative action.
> (iii) Actual expenses for lobbying other than travel expenses, whether received in the form of an advance or subsequent reimbursement.
> (iv) An expenditure for providing or using information, statistics, studies, or analysis in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

A person that makes such expenditures is required to keep records and file reports after meeting the thresholds set forth in the Act. If expenditures take the form of compensation to a person for the preparation of materials for use in lobbying, the expenditures must be reported by the lobbyist or lobbyist agent paying the compensation.

An individual who does not directly communicate with any public official is not a lobbyist or lobbyist agent. Such an individual should not be included in the listing of persons in section 6 of Form LR-1. In addition, a person who does not directly communicate with any public official is not required to register as a lobbyist agent under the Act.

In advising various persons regarding the Act's provisions the Department has attempted to make it clear that compensation paid to support staff such as those you have asked about must be reported pursuant to the Act's provisions even though the individuals receiving the compensation or reimbursement are not themselves required to register or report.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

2-84-LD

LANSING

MICHIGAN 48918

February 22, 1984

George F. Hill
Consumers Power Company
212 W. Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Hill:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the relationship between Consumers Power Company and its employees who are also public officials.

Specifically, you indicate Consumers Power Company is a lobbyist as defined in section 5(4) of the Act (MCL 4.415). The company employs several individuals who are members of state boards and commissions and therefore public officials who can be lobbied under the Act. Consumers Power "will be paying these employees wages and reimbursing them for meals and beverages. These meals may be purchased for the employee when he or she is out of town on Company business, when he or she works overtime or when he or she takes a party out to lunch or dinner for purposes of conducting Company business. On none of these occasions would the employee be conducting or engaged in any activity connected to his or her position on the state board or commission."

Your questions relating to these facts are set out and answered below.

I. "Is Consumers Power Company as a lobbyist required to report as financial transactions all payments of wages, including expense account reimbursement paid to employees who are public officials?"

"Financial transaction" is defined in section 3(3) of the Act (MCL 4.413) as a "loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value."

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist must file reports on January 31 and August 31 of each year. In addition to other information required by this section, each report must include the following:

> "Sec. 8. (1)(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods and services having value of at least $500.00 are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred."

As you note, the disclosure required by this section is not limited to financial transactions made for the purpose of lobbying. However, section 8(1)(c) does exempt financial transactions between a lobbyist and a public official "in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist."

"Ordinary course of business" is defined in Black's Law Dictionary as a normal or usual matter "which transpires as a matter of daily custom in business." The payment of an employee's wages and reimbursement of an expense account fall within this definition. Since Consumers Power Company's primary business is not lobbying, payment of wages and expenses in the specific circumstances you describe are financial transactions in the ordinary course of business which are exempt from disclosure under section 8(1)(c), provided the payments do not exceed the value of the consideration received by the company.

II. "Is Consumers Power Company as a lobbyist required to account for all expenditures for food and beverage provided its employees who are public officials?"

Section 8(1)(b)(ii) and rule 56, 1981 AACS R4.456, require a lobbyist to report expenditures for food and beverages provided for public officials. There is no exemption for food and beverage expenditures incurred in the ordinary course of business or for non-lobbying purposes. The reason for this approach, as explained by the Court of Appeals in its discussion of financial transactions in Pletz v Secretary of State, 125 Mich App 335 (1983), is that food and beverage expenditures "even where unrelated to a particular policy issue, may affect the recipient's inclination on matters of interest to the lobbyist."

This rationale does not apply to an employer/lobbyist who provides food and beverage to an employee while "conducting company business." Payment or reimbursement of meal expenses is part of the employee's ordinary compensation and

15-84-LI

MICHIGAN DEPARTMENT OF STATE

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LANSING

MICHIGAN 48918

March 8, 1984

Mr. John M. La Rose, Chairman
Michigan Townships Association
3121 W. Saginaw Street
Lansing, Michigan 48917

Dear Mr. La Rose:

This is in response to your two inquiries concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the Michigan Townships Association.

In your January 10, 1984, letter you ask:

> "In what instances would an elected or appointed township official or employee fail to be exempt from the Lobby Registration Act?"

Attached you will find a letter dated January 13, 1984, to Mr. Don M. Schmidt, which answers similar concerns relating to city officials. Under the Act there is no difference between city and township officials and employees. Also relevant to your question is the attached letter to Hannes Meyer, Jr., dated February 3, 1984. In summary, these letters indicate elected township officials (acting in the course of their offices and not compensated other than as officials) are exempt from the Act as are appointed officials who serve in autonomous, policymaking positions.

Elected township officials are not exempt when acting outside the scope of their offices or when compensated beyond the compensation provided by law for their offices. Appointed township officials are exempt only if they serve in autonomous, policymaking capacities and not under the direction or control of the elected township board.

In your December 22, 1983, letter you state:

> "We would like an opinion on whether the Michigan Council on Intergovernmental Relations must register as a lobbyist. Although we communicate with public officials, the communication is financed by the four associations which belong to MCIR (Michigan Townships Association, Michigan Municipal League, Michigan Association of

> Counties, and Michigan Association of Regions). MCIR writes to legislators and other public officials and conducts an annual legislative reception, but it has no authority to expend funds for lobbying purposes."

Like any other person, MCIR must register as a lobbyist if it expends more than $1,000.00 for lobbying in a twelve month period or more than $250.00 for lobbying a single public official in a twelve month period. Expenditures made writing to Legislators and other public officials for the purpose of influencing legislative or administrative action are counted toward these thresholds.

An annual legislative reception was discussed in a declaratory ruling issued to Mr. S. Don Potter on February 7, 1984. A copy is attached. While you did not give any facts regarding MCIR's reception, this declaratory ruling should provide some guidance for you.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

14-84-LI

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

March 1, 1984

MAR 2 1984

George N. Holcomb
Assistant to the President
Ferris State College
Big Rapids, MI 49307

Dear Mr. Holcomb:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to members of the Ferris State College Board of Control. Specifically, you ask for confirmation of your "understanding that members of the Ferris State College Board of Control are state public officials and, therefore, are exempt from becoming a lobbyist or a lobbyist agent under the terms of the Act." You also ask how Ferris State College is affected by board members' lobbying activities.

Attached is a letter to Mr. Kenneth F. Light, dated January 24, 1984, relating to colleges and college officials. As that letter explains, members of college and university boards of control, other than the boards of the University of Michigan, Michigan State University and Wayne State University, are appointed by the governor. Section 5(7)(c)(v) of the Act (MCL 4.415) specifically states that appointed members of state level boards or commissions are not excluded from the definitions of "lobbyist" and "lobbyist agent." Consequently, members of the Ferris State College Board of Control who receive compensation or reimbursement in excess of $250 in a 12-month period for lobbying (excluding travel expenses) must register with the Department of State as lobbyist agents.

Ferris State College, on the other hand, is required to register as a lobbyist if, in any 12-month period, it expends more than $1,000 for lobbying or more than $250 on lobbying a single public official. These monetary thresholds are calculated pursuant to rule 21, 1981 AACS R4.421, which states:

> "Rule 21. For the purpose of determining whether a person's expenditures for lobbying are more than $1,000.00 in value in any 12-month period, or are more than $250.00 in value in any 12-month period if expended on lobbying a single public official, the following expenditures shall be combined:
>
> (a) Expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Expenditures, other than travel expenses, incurred at the request or suggestion of a lobbyist agent or member of a lobbyist, or furnished for the assistance or use of a lobbyist agent or member of a lobbyist while engaged in lobbying.

(c) The compensation paid or payable to lobbyist agents, employees of the lobbyist, and members of a lobbyist for that portion of their time devoted to lobbying."

Thus, if Ferris State College compensates or reimburses members of the Board of Control, employees of the college (other than the President), or other lobbyist agents (such as a multi-client lobbying firm) in a combined amount of more than $1,000 for lobbying or more than $250 on lobbying a single official, the college must register as a lobbyist and file periodic reports detailing its lobbying expenditures as required by the Act.

This response is informational only and does not constitute a declaratory ruling.

Sincerely,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep

13-84-LI

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

March 1, 1984

Laura J. Hess, Attorney
Public Affairs Coordinator
UCS of Metropolitan Detroit
51 W. Warren
Detroit, MI 48201

Dear Ms. Hess:

This is in response to your request for information concerning the responsibilities of community agencies under the lobby act (the "Act"), 1978 PA 472, in regard to certain transactions.

Your question is set out below:

> What is the responsibility of an agency that provides rent either free or at a reduced cost to another agency that lobbies public officials. In some instances, the issues on which the receiving agency lobbies are related to those issues championed by the giver agency and in other instances they are not. The same question applies for those asgencies that make phone service or other kinds of service or equipment available to a lobbying organization."

Your letter further clarifies that the responsibilities to which you are referring are those relating to registration and perhaps reporting requirements under the Act.

It appears that the "giver agency" in your set of facts is concerned about a possible expenditure. The definition of "expenditure" in section 3(2) of the Act (MCL 4.413) includes "anything of value." An abatement of rent and free use of telephone and other equipment is indeed something of value. However, if the expenditure is not made for the purpose of lobbying, it is not an "expenditure" under the Act and is not reportable. Your letter does not indicate that the "receiving agencies" are lobbying on behalf of the "giver agency." Consequently, since there is no lobbyist-lobbyist agent relationship between the agencies, neither agency should report the benefits given or received. The "giver agency" is not required to register as a lobbyist based solely on the transaction cited in your letter.

This letter is informational only and does not constitute a declaratory ruling.

Sincerely,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep

12-84-LI

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

March 1, 1984

Senator John M. Engler
Office of the Majority Leader
State Capitol Building
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your letter regarding the way in which the lobby act, 1978 PA 472 (the "Act"), is being implemented by the Department of State.

Three areas are specifically mentioned in your letter as follows:

> "It is my understanding that except for specific and narrow exemptions and exceptions, the Lobby Act was designed to regulate all attempts to influence administrative and legislative action through the use of direct communication. The Legislature and the Governor in enacting the lobbying law were well aware that a significant amount of lobbying is carried out, properly, by employees in the various departments and agencies of state government which seek to influence the policy decisions of government agencies.
>
> With this background in mind, I request that you provide me with an explanation as to the purpose, background and reasoning behind the decision of the Department of State to impose narrowing interpretations in the following areas:
>
> 1. The exemption of non-policy making boards and commissions from the scope of the Act;
>
> 2. The exemption for intra-departmental communications designed to influence administrative action; and
>
> 3. The exemption for certain communications required by statute."

1. Non-policy making bodies.

Your letter takes exception to the language of Department of State publications which indicate that in order to be a public official a board or commission member must be on a board or commission with "policymaking authority" ("Overview of Lobby Registrations Act" p. 2").

In determining that a board or commission member may be lobbied, a determination must be made whether the individual is a "public official" pursuant to the Act. "Public official" and "official in the executive branch" are defined in sections 6(2) and 5(9) of the Act (MCL 4.416 and 4.415) as follows:

> "Sec. 6. (2) 'Public official' means an official in the executive or legislative branch of state government."
>
> "Sec. 5. (9) 'Official in the executive branch' means the governor, lieutenant governor, secretary of state, attorney general, member of any state board or commission, or an individual who is in the executive branch of state government and not under civil service. This includes an individual who is elected or appointed and has not yet taken, or an individual who is nominated for appointment to, any of the offices enumerated in this subsection. An official in the executive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity."

An entity with only advisory authority is "nonpolicymaking, or nonadministrative" in nature. The function of such bodies is to advise a public official of proposals or proposed actions. Lobbying under the Act consists of direct communication with a public official for the purpose of influencing legislative or administrative action (MCL 4.415). Reading the Act to include communications with advisory groups would expand the Act to encompass indirect lobbying. Such a reading would broaden the Act beyond its parameters and might subject it to a challenge on constitutional grounds.

2. Intra agency communications.

Contrary to your statement the Department has not said that all communications within a department are excluded from the definition of lobbying. The Department has stated that communications between autonomous agencies, even agencies in the same department, are lobbying if the other criteria of the Act are met. However, the Department has concluded that communications between civil service employees of an autonomous agency and the public officials charged with administering the agency are not lobbying.

The position the Department has taken on intra agency communications is consistent with both the letter and spirit of the Act. Section 6(1) of the Act defines the term "person" as follows:

> "Sec. 6. (1) 'Person' means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business

> trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly, including a state agency or a political subdivision of the state." (emphasis added)

A state agency is clearly a person pursuant to section 6(1).

If the Department concluded that intra agency communications were lobbying it would be contrary to this definition because a person would have to register and report for lobbying itself.

To require registration and reporting under the Act by civil service employees who communicate with the public officials who administer the employing agency would work to impede intra-agency communication. A public official is entitled to expect frank and open communication from civil servants in the agency the official administers. A reading of the Act which encompasses communications between employees and their employers goes far beyond the Act's intent. It presupposes that an executive agency is required to report expenditures made in the course of implementing statutes which it is charged with administering.

3. The formulation of the state budget.

The Department is currently formulating a comprehensive response to questions raised by the Governor's staff and various departments with respect to the formulation of the annual state budget. Rather than dealing with your general questions in this area the Department will soon be providing a detailed response with respect to the budgetary process.

This response is informational only and does not constitute a declaratory ruling as none was requested.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

3-84-LD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

LANSING

MICHIGAN 48918

March 1, 1984

Gregory K. Merryman
Appeals and Research Legal Staff
General Motors Building
3044 W. Grand Boulevard
Detroit, MI 48202

Dear Mr. Merryman:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to General Motors Corporation and its employees. The specific facts and questions you raise are set out and answered below.

I.

Section 3 of the Air Pollution Act, 1965 PA 348, as amended, (MCL 335.13) provides for the creation of an eleven member air pollution control commission. Two members of the commission are required to be "representatives of industrial management, 1 of whom shall be a registered professional engineer trained and experienced in matters of air pollution measurement and control."

One industry representative appointed to the Michigan Air Pollution Control Commission (MAPCC) is an employee of General Motors. As an appointed member of a state level board or commission, the employee is an official in the executive branch of state government who can be lobbied under the Act. General Motors itself is a lobbyist as defined in section 5(4).

Your first question is whether General Motors Corporation as a lobbyist is required to report the employee's salary and fringe benefits as financial transactions. In the attached letter to Mr. George F. Hill, dated February 22, 1984, the Department indicated that wages and expenses paid to an employee who is a public official are financial transactions in the ordinary course of business. As such, salary and fringe benefits paid to a General Motors employee who is an official are exempt from disclosure under section 8(1)(c) of the Act (MCL 4,418), provided the employee's salary and benefits do not exceed the consideration received by the company.

Your remaining questions concern communications between the employee/official and his co-workers. Specifically, you state:

> "By design of MCLA §336.13, the employe's job involves matters relating to air pollution control. In the course of fulfilling his employment responsibilities, the employe may discuss air pollution control matters with other General Motors employes. Would such discussion constitute lobbying if they were related to issues that may be of concern to the MAPCC, but did not cover specific proposals pending before the MAPCC? Would such discussions constitute lobbying if they were part of an attempt to develop the position of General Motors on issues pending before the MAPCC?"

"Lobbying" is defined in section 5(2) of the Act as "communicating directly with an official in the executive branch of state government . . . for the purpose of influencing legislative or administrative action."

Definitions of "administrative action" and "legislative action" are found in sections 2(1) (MCL 4.412) and 5(1), respectively. These sections state, in relevant part:

> "Sec. 2. (1) 'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat of a non-ministerial action or rule by an executive agency or an official in the executive branch of state government."

> "Sec. 5. (1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature."

In your first hypothetical, the employee who is a public official communicates with other General Motors employees about air pollution control matters which bear no relationship to issues pending before the MAPCC. Your question, rephrased, is whether General Motors employees who communicate with the employee/official in these circumstances are engaged in lobbying.

Discussions among co-workers are lobbying if they are for the purpose of influencing administrative or legislative action the employee may take as a public official. However, where there is no relevant issue before the MAPCC, the only administrative or legislative action possible is the proposal, drafting or development of a nonministerial action or rule, or the support of or opposition to a matter pending or proposed in the legislature. Therefore, General Motors employees who communicate with the employee/official are lobbying only if the communication is for the direct and express purpose of developing or intro-

ducing an issue for the MAPCC's consideration or encouraging the employee/official to support or oppose a legislative matter.

Your second hypothetical relates to the employee/official's involvement in "an attempt to develop the position of General Motors" on matters currently before the MAPCC. If General Motors has not decided to lobby on an issue, communicating with the employee/official for the purpose of assisting the company in deciding whether to lobby is not lobbying. However, if General Motors has decided to lobby for or against a matter, discussions which include the employee/official are lobbying and must be reported by the company.

This interpretation should not be construed as affecting conflict of interest issues or other matters regulated by the State Board of Ethics.

II.

General Motors Corporation also employs individuals who serve on the governing boards of Oakland University and Michigan Technological University. You ask whether these employees are public officials and whether they are engaged in lobbying when they attend and participate in Board of Trustee meetings. (The response in part I concerning financial transactions is applicable here and will not be repeated.)

Section 6(2) of the Act (MCL 4.416) states that a "public official" is an official in the executive or legislative branch of state government. Pursuant to section 5(9), "official in the executive branch" includes a member of any state board or commission. Article 5, §2 of the Constitution of 1963 indicates the governing bodies of institutions of higher education are agencies within the executive branch. Thus, a college or university board of control is a state board within the executive branch, and members of the board are public officials for purposes of the Act.

With respect to your second question, rule 25(2), 1981 AACS R4.425, provides:

> "Rule 25. (2) An appointed member of a state level board or commission is not a lobbyist agent merely because of membership on the board or commission. An appointed member of the board or commission is a lobbyist agent if the member engages in lobbying and his or her compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act."

This rule implies that communications between board members are not subject to the Act. However, if an appointed member of a state board is compensated or reimbursed by either the board or an employer for lobbying other public officials, the member may become a lobbyist agent as provided in section 5(5) of the Act, and the person compensating the board member must report the payment as an expenditure for lobbying.

III.

A General Motors employee is a member of the Governor's Executive Corps who has been assigned full time to the Department of Commerce. You ask whether this employee is a public official and whether the employee is a lobbyist agent for the company if the employee attempts to influence legislative or administrative action on behalf of the State.

Pursuant to section 5(9) of the Act, "official in the executive branch" includes an unclassified, policymaking employee but not "a person serving in a clerical, nonpolicymaking, or nonadministrative capacity." The Department of Commerce has provided the Secretary of State with the names of its policymaking employees, which are included in the list of public officials compiled by the Department of State. If General Motors' employee's name is not on the list, it is presumed the employee is not a public official because the Department of Commerce has determined the employee serves in a clerical, nonpolicymaking or nonadministrative capacity. Conversely, if the employee's name appears on the list, the employee is considered a policymaker by the Department of Commerce and therefore a public official for purposes of the Act.

Your second question is whether the employee, who is paid by General Motors, is a lobbyist agent for the company if the employee lobbies on behalf of the State. According to section 5(5) of the Act, a lobbyist agent is a person who is compensated or reimbursed for lobbying. Members of the Executive Corps are not paid by their private sector employers to lobby but to assist the State. Consequently, if your employee lobbies on behalf of the Department of Commerce or the State of Michigan, the employee is not a lobbyist agent for General Motors Corporation.

IV.

Your final questions concern General Motors employees who serve on the Governor's Commission on Jobs and Economic Development and that Commission's High Technology Task Force. Again, you ask whether these employees are public officials and whether they are engaged in lobbying when they fulfill their Commission duties.

The Commission on Jobs and Economic Development is a group created to advise the Governor of proposed actions and strategies relating to the economy. It is not empowered to take administrative action as that term is used in the Act.

In a letter to Senator John M. Engler, dated March 1, 1984, the Department indicated that commissions having only advisory authority are nonpolicymaking or nonadministrative in nature. Therefore, members of advisory groups are not public officials because they do not serve in policymaking capacities.

Advisory commission members are similar to other individuals employed in the Governor's office. That is, both are expected to provide information and advice

to the Governor and public officials within the Executive Office who are responsible for making policy. The Department has interpreted the Act as excluding communications between employees and the public officials for whom they work. As such, members of an advisory commission are not lobbying when they fulfill their duties as commissioners.

This response is a declaratory ruling relating to the specific facts and questions you have raised.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/cw

15-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 8, 1984

Mr. John M. La Rose, Chairman
Michigan Townships Association
3121 W. Saginaw Street
Lansing, Michigan 48917

Dear Mr. La Rose:

This is in response to your two inquiries concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the Michigan Townships Association.

In your January 10, 1984, letter you ask:

> "In what instances would an elected or appointed township official or employee fail to be exempt from the Lobby Registration Act?"

Attached you will find a letter dated January 13, 1984, to Mr. Don M. Schmidt, which answers similar concerns relating to city officials. Under the Act there is no difference between city and township officials and employees. Also relevant to your question is the attached letter to Hannes Meyer, Jr., dated February 3, 1984. In summary, these letters indicate elected township officials (acting in the course of their offices and not compensated other than as officials) are exempt from the Act as are appointed officials who serve in autonomous, policymaking positions.

Elected township officials are not exempt when acting outside the scope of their offices or when compensated beyond the compensation provided by law for their offices. Appointed township officials are exempt only if they serve in autonomous, policymaking capacities and not under the direction or control of the elected township board.

In your December 22, 1983, letter you state:

> "We would like an opinion on whether the Michigan Council on Intergovernmental Relations must register as a lobbyist. Although we communicate with public officials, the communication is financed by the four associations which belong to MCIR (Michigan Townships Association, Michigan Municipal League, Michigan Association of

> Counties, and Michigan Association of Regions). MCIR writes to legislators and other public officials and conducts an annual legislative reception, but it has no authority to expend funds for lobbying purposes."

Like any other person, MCIR must register as a lobbyist if it expends more than $1,000.00 for lobbying in a twelve month period or more than $250.00 for lobbying a single public official in a twelve month period. Expenditures made writing to Legislators and other public officials for the purpose of influencing legislative or administrative action are counted toward these thresholds.

An annual legislative reception was discussed in a declaratory ruling issued to Mr. S. Don Potter on February 7, 1984. A copy is attached. While you did not give any facts regarding MCIR's reception, this declaratory ruling should provide some guidance for you.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

4-84-LD

March 16, 1984

Mr. Charles Nida
Honigman, Miller, Schwartz & Cohn
2290 First National Building
Detroit, Michigan 48226

Dear Mr. Nida:

This is in response to your request for a declaratory ruling concerning the application of the lobby act (the "Act"), 1978 PA 472, to the Michigan Thanksgiving Parade Foundation (the "Foundation").

The Foundation is a Michigan non-profit corporation which has been determined to be a charitable organization by the Internal Revenue Service and has also been licensed to solicit charitable contributions by the Michigan Attorney General. You indicate that "the purpose of the Foundation, in general, is to sponsor, coordinate and produce a Thanksgiving Day Parade for the benefit of the residents of the State of Michigan" and that the Board of Directors is composed of "community leaders, including a number of public officials." Further, you state that the Foundation has solicited and received contributions from the general public in the form of cash, goods and services and that "many of those contributions were made by businesses and individuals who would have been lobbyists or lobbyists agents had the Act then been applicable." It is your position that lobbyists and lobbyist agents who make such contributions should not be required to report such contributions as financial transactions under section 8(1)(c) of the Act (MCL 4.418).

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist is required to file reports each January 31 and August 31. In addition to other information required by this section, each report must include the following:

> "Sec. 8. (1)(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist. agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods or services having value of at least $500.00 are involved. The account shall include the date and nature of the tran-

saction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred."

The entire focus of the Act aims at disclosing relationships, financial and otherwise, between lobbyists or lobbyist agents and public officials. Funds solicited do not go to the Directors individually, and checks for contributions are not made out to any Director personally but to the Foundation. It therefore seems clear that, in the circumstances you relate, there is no "financial transaction . . . between the lobbyist or lobbyist agent . . . and public official" which might be reported. Any financial transaction would be between the lobbyist and the Foundation, and the role of the public official is simply as an intermediary who receives no gain or profit by the donation.

This response is a declaratory ruling relating to the facts and questions you have presented.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

5-84-LD

March 16, 1984

Ms. Sharon L. Kellogg
Chairperson
Michigan Information and Research Service, Inc.
410 Michigan National Tower
P.O. Box 1087
Lansing, Michigan 48901

Dear Ms. Kellogg:

This is in response to your request for a declaratory ruling concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to Michigan Information and Research Service, Inc. ("MIRS"). The specific facts and questions you raise are set out and answered below.

You indicate MIRS collects, reviews, indexes, and summarizes all pending and proposed action in the Michigan Legislature for the purpose of providing legislative information to its subscribers and clients. MIRS publishes the MIRS Legislative Report on a daily basis and makes available to its subscribers copies of bills, journals, analyses, and public acts. MIRS provides a complimentary copy of each issue of MIRS Legislative Report to each Legislator. MIRS occasionally purchases food and beverage for public officials "in the course of acquiring information for dissemination to its subscribers."

In addition, you indicate MIRS conducts research projects involving legislative matters on a contractual basis. These projects are prepared for clients and MIRS has no knowledge of whether the product delivered to the client will be used to influence legislative or administrative action.

> "1. Are MIRS officers and staff members considered working members of the press, as described in Section 5(7)(a), while engaged in collecting and disseminating news of legislative activities to the MIRS subscribers in the ordinary course of business?"

The Court of Appeals stated in Pletz v Secretary of State, 125 Mich App 335 (1983):

> "While the term 'working member' is a rather new expression, it seems clear that the Legislature intended to exempt the news media while disseminating news or editorial comment to the general public in the ordinary course of business." 125 Mich App 335, 362

MIRS employees are clearly working members of the press and MIRS is a publisher.

> "2. Is MIRS a lobbyist or lobbyist agent as those terms are defined in Section 5 of the Act?"

Section 5(7)(a) of the Act (MCL 4.415) expressly states: "Lobbyist or lobbyist agent does not include a publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business." (emphasis added) To the extent MIRS is disseminating news or editorial comment it is not a lobbyist or lobbyist agent. In addition, the Court in Pletz stated:

> "We believe that the Legislature intended communications with public officials for purposes of gathering and disseminating news be outside the act's coverage.
>
> * * *
>
> The press exemption properly excludes the acts of talking and writing to public officials for purposes of gathering news and information for dissemination. Such communications fall outside the purview of the statute, since they are not made to influence administrative or legislative action." 125 Mich App 335, 361-362

Therefore, MIRS is not a lobbyist or lobbyist agent as a result of its direct communications with public officials when the purpose of the communication is to gather information.

In addition to the facts you provided which are summarized above, you indicated the following:

> "In the course of acquiring information for dissemination to subscribers, MIRS may communicate directly with officials in the legislative branch of state government and attempt to influence officials in the executive branch of state government with respect to (a) access to information or news and (b) equal treatment of MIRS staff as compared with other working members of the press.
>
> * * *
>
> MIRS does not now, and does not contemplate, communicating directly with public officials for the purpose of influencing legislative or administrative action on behalf of itself or its clients or subscri-

> bers except insofar as the communications are directly related to the activities of MIRS in collecting news and information for dissemination to its subscribers in the ordinary course of business."

To the extent MIRS communicates directly with officials in the executive and legislative branches for the purpose of influencing legislative or executive action (as opposed to gathering information), MIRS is lobbying. However, seeking equal access to legislative press facilities would not be a lobbying activity because that is so intimately intertwined with MIRS's efforts to gather and disseminate news that it falls within the press exception. Should MIRS spend $1,000 communicating directly with public officials for the purpose of influencing administrative or legislative action, MIRS would become a lobbyist and would be required to be registered. MIRS would also become a lobbyist if it meets the $250 threshold for lobbying a single public official.

> "3. Are the costs of a subscription to MIRS, which may exceed $1,000 per year, counted in determining whether a person meets the statutory threshold of lobbyist or lobbyist agent as provided in Section 5 of the Act?"

Section 5(4) indicates a lobbyist is a person whose "expenditures for lobbying" exceed a certain threshold. Lobbyist agent is defined in section 5(5) as a person who "receives compensation or reimbursement of actual expenses . . . for lobbying " in excess of $250 in a 12 month period. " Expenditures for lobbying" is defined in rule 1(d) (1981 AACS R4.411) to include:

> "(iv) An expenditure for providing or using information, statistics, studies, or analyses in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

If the information contained in the MIRS Legislative Report would not have been purchased but for the direct communication, the cost of subscription would be counted toward the statutory thresholds. It is unlikely the purchase of a subscription to MIRS Legislative Report would meet the "but for" test as most subscribers would purchase the Report for activities not covered by the Act, such as being informed about what the Legislature is doing or gaining information which will help the subscriber decide whether to lobby.

However, the contractual work which MIRS performs may meet this test. For example, where a lobbyist or lobbyist agent desires to support a piece of legislation and contracts with MIRS for the purpose of compiling information to be used to bolster its position, the cost of the MIRS contract is an expenditure for lobbying which must be included in a report filed by the lobbyist or lobbyist agent or counted toward the threshold of a person who is not yet a lobbyist or lobbyist agent. Of course, MIRS does not become a lobbyist because it provides this information; if MIRS is already a lobbyist, the amount received for such a report would not be reported by MIRS.

"4. Is a lobbyist or lobbyist agent who subscribes to MIRS required to report the cost of the subscription in the lobbyist's or lobbyist agent's twice yearly report?"

As with the previous question, a subscription probably would not be purchased as a part of the specific direct communication which the lobbyist or lobbyist agent is making. Only if this expenditure does meet the "but for" test, would the lobbyist or lobbyist agent include the cost of the subscription in its bi-annual report.

"5. Is the value of compensation paid to a lobbyist agent for reading the MIRS Legislative Report required to be reported as a lobbying expenditure by the lobbyist employing the lobbyist agent?".

Normally, this compensation would not be considered an expenditure for lobbying. The lobbyist agent who reads MIRS Legislative Report on a regular basis, such as upon opening each day's mail, is not required to report this time.

However, where the lobbyist agent is reading the report as part of the agent's drafting of a letter to a public official or a paper which will be presented to a public official, then the compensation will be reported by both the lobbyist and the lobbyist agent. An example of this reportable time is where the lobbyist agent is going through back issues to find a quote by a public official or to determine how a Legislator voted on a bill so the Legislator can be reminded of his or her past position in a letter designed to influence future action. Again, the compensation is for lobbying only if it meets the "but for" test discussed above.

"6. Are expenditures for food and beverage for public officials which are incurred in the course of collecting information and news on legislative activities required to be reported?"

The Act requires lobbyists and lobbyists agents to report certain items pursuant to section 8 of the Act (MCL 4.418). Lobbyists and lobbyist agents must report "expenditures for food and beverage provided for public officials as specified in subsection (2)." There is no purpose test for this food and beverage report--it does not matter whether the expenditure for food and beverage was for the purpose of lobbying or for some other purpose. However, these food and beverage expenditures are only reported by lobbyists and lobbyist agents. Unless MIRS is a lobbyist or lobbyist agent, it would never need to report anything under the Act. Should MIRS's expenditures for lobbying exceed the $250 or $1,000 thresholds as discussed in the answer to question 2, MIRS would be a lobbyist and would report expenditures for food and beverage provided public officials even though the purpose of the meal was for MIRS to collect information as a member of the press.

This response is a declaratory ruling relating to the specific facts and questions you have raised.

Sincerely,

Richard H. Austin
Secretary of State

RHA/cw